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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/897,226	07/02/2001	Kevin P. McAuliffe	6169-206	9030
40987 7590 11/24/2008 AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER				
BEKIRMAN, MICHAEL				
ART UNIT		PAPER NUMBER		
3622				
MAIL DATE		DELIVERY MODE		
11/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## DETAILED ACTION

This action is responsive to papers filed on 8/1/2008.

### ***Election/Restrictions***

1. Newly amended claims 1-20 and 23-46 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Originally filed claims 1-20 and 23-46 are directed towards systems and methods for negotiating an agreement based on a plurality of merchant-specified incentives and a single consumer-specified minimum value.

In contrast, newly amended claims 1-10 and 23-36 recite a separate and distinct invention which identifies systems and methods for determining a plurality of consumer minimum values based on information provided by a consumer, determining a plurality of incentives based on information provided by a merchant, and negotiating an agreement. Newly amended claims 11-20 and 37-46 recite a separate and distinct invention which identifies a systems and methods for determining a plurality of consumer minimum values based on information provided by a consumer and negotiating an agreement based on the consumer minimum values and a plurality of merchant-specified incentives.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-20 and 23-46 are withdrawn from

consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Response to Arguments***

2. Applicant's arguments are directed towards an explanation of how a plurality of consumer-specified minimum values would not make the claims restrictable from a single consumer-specified value. However, this was not the criteria on which the restriction was based. Examiner has reproduced the restriction above as it appeared in the previous notice of non-compliance. The underlined portions are what Examiner considers to be the important differences between the original claims and the new claims.

3. In the original invention, the consumer and merchant specify particular minimum values and incentives respectively by which a negotiation takes place. In the new invention, there exists completely different functionality, in which the system determines the minimum values and incentives itself based on information supplied by the consumer and merchant.

4. Should Applicant wish to prosecute the current claim set, Examiner recommends the filing of a divisional application within the period of reply for the present application.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL BEKERMAN whose telephone number is

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(571)272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Bekerman/  
Examiner, Art Unit 3622